

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0522P

Gross Income Tax

Fiscal Years Ending 02/28/90, 02/28/91, 02/29/92, 02/28/93, 09/30/93, 03/31/94, 03/31/95

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer incorporated under the laws of Illinois has four Indiana business locations.

Taxpayer, in a letter dated August 28, 1998 protested penalties assessed because there was no intentional disregard of Indiana tax regulations or attempt to avoid reporting income and paying tax.

Taxpayer further states the resulting deficiency upon examination was not due to negligence but due to an income classification error between the Indiana high and low rates. Further, the taxpayer states it cooperated with the Indiana auditor and supplied information and responses in a timely manner.

I. **Tax Administration** -Penalty

DISCUSSION

Taxpayer was assessed a negligence penalty for failure to segregate high rate and low rate gross income. The Indiana Code and Regulations are clear regarding the issue. 45 IAC 1-1-115 and 45 IAC 1-1-176 provides that a taxpayer must separate such income on his tax returns and in his books and records. If he fails to do so, the highest rate applicable to any part of his income will be applied to all of it. IC 6-2.1-2-7 states:

- (a) A taxpayer must report separately, on a return filed pursuant to IC 6-2.1-5, gross gross income that is subject to different rates of taxation under this chapter.

- (b) A taxpayer must separate,, on his records, gross income that is subject to different rates of taxation under this chapter.
- (c) If a taxpayer fails to separate his gross income on his returns or records as required by subsections (a) and (b), then the taxpayer's entire gross income is subject to the higher of the rates provided by IC 6-2.1-2-3 for a particular taxable year.

Taxpayer states the deficiency was not a result of negligence but an income classification error.

Taxpayer's argument states that historically it has always filed its Indiana returns and tax payments in a timely manner and has cooperated with the auditor.

A review of the audit indicates the taxpayer failed to segregate high rate and low rate receipts and the auditor allowed the taxpayer to present actual information to separate the two rates instead of subjecting the entire amount to the high rate as required under IC 6-2.1.2-7

The department finds that a negligence penalty is proper. The Indiana Code and Departmental Regulations are clear regarding the segregation of receipts taxable at different rates.

FINDING

Taxpayer's protest is denied.